IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Soma Ram & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 665/2005
against the order dated 19-8-2004 passed
by the Judicial Magistrate, Pindwara, district
Sirohi, in Criminal Original Case No.507/2004.

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Date of Order: September 15, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Suresh Kumbhat, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Rahul Sharma, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have assailed the order dated 19-8-2004 passed by the Judicial Magistrate, Pindwara, district Sirohi (for short, "the trial Court" hereinafter) in Criminal Original Case No. 507/2004 and also sought quashing of criminal proceedings.

I have heard learned counsel for the parties. Carefully gone through the order impugned, as also the first information report lodged by the complainant/non-petitioner No.2.

It is contended by the learned counsel for the

petitioners that from a bare perusal of the FIR, no offence under Section 384 IPC is made out against the petitioners. He has relied on the decisions of this Court in Vena Ram & ors. Vs. State of Rajasthan, 2002 (1) R.Cr.D. 230; Hakam Vs. State of Rajasthan, 2005 (1) R.CC. 416; and a decision of Bombay High Court in Sanjay Pandey Vs. Chhaganlal J. Jain & ors., 2001 Cri.L.J. 2127 (Bombay).

Section 383 IPC defines "extortion", which means whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion." Thus, the very essential ingredient for committing the offence under Section 384 IPC is that any person, who intentionally puts any person in fear of any injury to that person, or any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security. On a plain reading of the FIR, there is no such averment that the petitioners intentionally put the complainant/non-petitioner No.2 in a fear for any injury and thereby dishonestly induced him to deliver the property to any person. Admittedly, no amount has been given by the complainant/non-petitioner No.2 to any of the petitioners.

This Court, on similar facts, in Vena Ram & ors. Vs. State of Rajasthan (supra), held that one of the ingredients for offence under Section 384 IPC is that the accused thereby induced the person so put in fear to deliver to some person, some property, or valuable security or something signed or sealed, which was convertible into a valuable security. These ingredients being missing in that case, the order taking cognizance and the proceedings in the case were quashed.

In Hakam Vs. State of Rajasthan (supra), this Court, relying on a Division Bench decision of Saurashtra High Court in Labhshanker Keshavji & Anr. Vs. State, AIR 1955 Saurashtra 42, held that the essence of the offence of extortion is in the actual delivery of possession of the property by the person put in fear and the offence is not complete before such delivery. In that case, no money was paid to the appellant pursuant to his threat, and, therefore, in absence of payment of the demanded amount to the appellant, the Saurashtra High Court held that ingredients of the offence under Section 383 IPC are not at all attracted and thus, conviction of the appellant under Section 384 IPC cannot be maintained and is liable to be set aside.

In Sanjay Pandey Vs. Chhaganlal J. Jain & ors. (supra), the entire complaint, and more particularly para 5 of the complaint which refers to the applicant therein, did not at all reveal that any property or valuable security was delivered by

the complainant to the accused No.1 and that any threat was given by accused No.2 to force the complainant to deliver the said property to accused No.1 and, therefore, the Bombay High Court held that the ingredients of extortion are not at all made out. On these premises, the Bombay High Court quashed the proceedings.

In the case in hand, there is no evidence that any money was paid by the complainant/non-petitioner No.2 to the petitioners. Even there is no evidence that the petitioners, with a dishonest intention, threatened the complainant by inducing him to deliver money or any valuable property. In the circumstances, therefore, to allow the proceedings to continue against the petitioners would be nothing but an abuse of the process of the Court. The order impugned passed by the Court below taking cognizance of the offence against the petitioners is without there being sufficient ground and as such liable to be set aside.

In the result, the criminal miscellaneous petition is allowed. The impugned order dated 19-8-2004 passed by the trial Court is set aside and the proceedings against the present petitioners stand quashed.

(H.R. PANWAR), J.

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